No. 24-1522 and all consolidated cases: Nos. 24-1624, 24-1626, 24-1627, 24-1628, 24-1631, 24-1634, 24-1685, and 24-2173

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

STATE OF IOWA, et al.,

Petitioners,

v.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Respondent,

DISTRICT OF COLUMBIA, et al.,

Intervenors.

On Petitions for Review of an Order of the Securities and Exchange Commission

BRIEF OF AMICI CURIAE AMERICANS FOR FINANCIAL REFORM EDUCATION FUND, ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND SIERRA CLUB FOUNDATION, IN SUPPORT OF RESPONDENT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and 8th Cir. R. 26.1.A., no *amici curiae* have parent corporations and no publicly held corporation owns 10% or more of the stock in any of them.

/s/ *Hana Vizcarra*

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Biestek v. Berryhill,
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Bldg. Indus. Ass'n of Superior CA v. Norton,
247 F.3d 1241 (D.C. Cir. 2001)....................29

Bowman Transp., Inc. v. AR-Best Freight System, Inc.,
419 U.S. 281 (1974)....................30

Chamber of Com. v. SEC,
443 F.3d 890 (D.C. Cir. 2006)....................29

Competitive Enter. Inst. v. U. S. Dep't of Transp.,
863 F.3d 911 (D.C. Cir. 2017)....................29

FCC v. Prometheus Radio Project,
592 U.S. 414 (2021)....................29

Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29 (1983)....................30

Nat'l Parks Conservation Ass'n v. McCarthy,
816 F.3d 989 (8th Cir. 2016) 27

NRDC v. SEC,
606 F.2d 1031 (D.C. Cir. 1979)....................3

Statutes

15 U.S.C. § 77g(a)(1)....................7

15 U.S.C § 78m(a) 7

Inflation Reduction Act....................23

Securities Act and Securities Exchange Act....................6

Telecommunications Act 29

Other Authorities

36 Fed. Reg. 13,989 (July 29, 1971)..8

38 Fed. Reg. 12,100 (May 9, 1973) 8

40 Fed. Reg. 51,656 (Nov. 6, 1975)...9, 10

41 Fed. Reg. 21,632 (May 27, 1976) 8, 9

46 Fed. Reg. 25,638 (May 8, 1981) 8

75 Fed. Reg. 6,290 (Feb. 8, 2010) 10

81 Fed. Reg. 23,916 (Apr. 22, 2016) 12, 13

87 Fed. Reg. 21,334 (Apr. 11, 2022) 27, 28

89 Fed. Reg. 21,668 (Mar. 28, 2024)...1, 16-18, 23-26, 28

AllianceBernstein Comment Letter at 2, 4-5 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131813-302250.pdf 23, 25

Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, SEC (Mar. 15, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-climate-change-disclosures 15

Allison Herren Lee, *Statement on the Review of Climate-Related Disclosure*, SEC (Feb. 24, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-statement-review-climate-related-disclosure..14

Arathy Somasekhar, *Nearly a Million in Texas Still Without Power After Hurricane Beryl*, Reuters (July 12, 2024), https://www.reuters.com/world/us/nearly-million-texas-still-without-power-after-hurricane-beryl-2024-07-12/ 21

Brian Lada, *Beryl's fury turns deadly, leaves millions in the dark across Texas*, AccuWeather (July 10, 2024), https://www.accuweather.com/en/hurricane/beryls-fury-turns-deadly-leaves-millions-in-the-dark-across-texas/1667762................................21

CalPERS Comment Letter at 7 (June 15, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131391-301546.pdf 25

CalSTRS Comment Letter at 7 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132337-302902.pdf 17

Calvert Letter at 2 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132239-302761.pdf 18

Chaffin Mitchell, *U.S. disaster aid won't cover lost crops in Midwest floods, farmers out millions of dollars*, AccuWeather (July 1, 2019), https://www.accuweather.com/en/weather-news/us-disaster-aid-wont-cover-lost-crops-in-midwest-floods-farmers-out-millions-of-dollars/332960 20

Christopher Flavelle, *As Climate Shocks Grow, Lawmakers Investigate Insurers Fleeing Risky Areas*, N.Y. Times, https://www.nytimes.com/2023/11/01/climate/climate-insurance-disasters-senate.html (last visited Aug. 14, 2024) 19

Dow Comment Letter at 6 (May 19, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20129102-294777.pdf 18

George S. Georgiev, *The Market-Essential Role of Corporate Climate Disclosure*, 56 U.C. Davis L. Rev. 2105, 2116-17 (2023) 28

Hurricane Beryl, Texas Division of Emergency Management (2024), https://tdem.texas.gov/disasters/beryl 20

Jill E. Fisch et. al., *The Logic and Limits of Event Studies in Securities Fraud Litigation*, 96 Tex. L. Rev. 553, 556 (2018) 29

Jonathan Erdman, *Hurricane Beryl Spawned Most US Tornadoes of Any Tropical System in 19 Years*, The Weather Channel (July 22, 2024), https://weather.com/storms/tornado/news/2024-07-13-hurricane-beryl-most-us-tornadoes-since-2005 20

Appellate Case: 24-1522 Page: 8 Date Filed: 08/15/2024 Entry ID: 5424921

Kelly Stroh et al., *How Hurricane Beryl is Impacting Logistics Operations in Houston*, Supply Chain Dive (July 10, 2024), https://www.supplychaindive.com/news/hurricane-beryl-logistics-operations-houston-air-cargo-trucking-rail-maritime/721017/ 21

Mekala Krishnan et al., *The economic transformation: What would change in the net-zero transition* (Jan. 25, 2022), https://www.mckinsey.com/capabilities/sustainability/our-insights/the-economic-transformation-what-would-change-in-the-net-zero-transition 24

Marianna Parraga et al., *Oil companies try to restore Texas operations after Storm Beryl*, Reuters (July 9, 2024), https://www.reuters.com/business/energy/oil-companies-texas-restoring-operations-following-hurricane-beryl-2024-07-09/. 21

NOAA, Nat'l Center for Env't Information, *Billion-Dollar Weather Climate Disasters* (2024), https://www.ncei.noaa.gov/access/billions/ 19, 22

PIMCO Comment Letter (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132331-302894.pdf 16

Record Rainfall Floods Midwest, NASA Earth Observatory (June 25, 2024), https://earthobservatory.nasa.gov/images/152982/record-rainfall-floods-midwest 19

SEC Announces Enforcement Task Force Focused on Climate and ESG Issues, SEC (Mar. 4, 2021), https://www.sec.gov/newsroom/press-releases/2021-42 14

SEC Division of Examinations Announces 2021 Examination Priorities, SEC (Mar. 3, 2021), https://www.sec.gov/newsroom/press-releases/2021-39 14

Shell's US $22bn write down 'signals fundamental change,' Wood Mackenzie (June 30, 2020), https://www.woodmac.com/press-releases/shell_writes_down_us$22bn_in_assets/ 24

Appellate Case: 24-1522 Page: 9 Date Filed: 08/15/2024 Entry ID: 5424921

Steven Yablonski & Scott Sistek, *Life-Threatening Flash Flooding, Record River Flooding in Upper Midwest*, Fox Weather (June 21, 2024), https://www.foxweather.com/weather-news/life-threatening-flash-flooding-record-river-flooding-upper-midwest-iowa-minnesota 19

System-Level Investing: Case Studies of Investors Leading the Way, The Investment Integration Project (Apr. 10, 2024), https://tiiproject.com/the-investment-integration-project-releases-new-report-system-level-investing-case-studies-of-investors-leading-the-way-that-highlights-first-mover-investment-teams-that-have-embrac/ 26

System Stewardship Theory, The Shareholder Commons (2024), https://theshareholdercommons.com/resources-page/ 26

Trillium Asset Management Comment Letter at 2-4 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20147082-312665.pdf 25

Tyne Morgan, *Flooding Across Midwest May Have Wiped Out Up to 1 Million Acres of Crops*, AgWeb (July 3, 2024), https://www.agweb.com/news/crops/crop-production/flooding-across-midwest-may-have-wiped-out-1-million-acres-crops-new 20

U.S. Global Change Research Program, *Fifth National Climate Assessment* 2-18 to 2-19 (2023), https://nca2023.globalchange.gov/ 19, 20

Wellington Management Co. Comment Letter at 3 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131856-302305.pdf 17, 22

INTEREST OF AMICI CURIAE

Amici curiae Americans for Financial Reform Education Fund, Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, and Sierra Club Foundation, are non-profit organizations that have differing missions and areas of focus but share a common assessment that climate-related impacts pose significant and growing financial risks to investors, the capital markets, and the financial system.[1] *Amici* have a shared interest in ensuring that the Securities and Exchange Commission ("SEC" or "the Commission") rules published as *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, SEC Release No. 33-11275 and No. 34-99678 (Mar. 6, 2024), published at 89 Fed. Reg. 21,668 (Mar. 28, 2024) (the "Rules") go into effect, to equip investors with essential information to manage climate-related financial risks, inform investment practices, and value securities. *Amici* are attuned to such risks due to organizational expertise spanning financial regulation, economics, and climate-related impacts on society, companies, and the financial system. *Amici* share the goals of protecting investors, ensuring fair and efficient capital markets, and promoting capital formation. *Amici* advocate in furtherance of

[1] No counsel for a party authored this brief in whole or in part. No person other than *amici curiae* and their counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this amicus brief.

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those goals with respect to climate-related financial risks.

Furthermore, *amici* have deep expertise in administrative law and the federal rulemaking process. All *amici* submitted comments on the proposed rule. While some *amici* think the Rules could have been stronger,[2] all *amici* view the Rules as an essential improvement over the status quo.

Americans for Financial Reform Education Fund ("AFREF") is a nonpartisan and nonprofit coalition founded in the wake of the 2008 financial crisis that seeks to build a strong, stable, and ethical financial system that serves the economy and nation as a whole. Its vision is a world in which the rules governing the economy justly and sustainably focus on human needs and help all families and communities thrive. AFREF has a long history of advocating for improvements to the SEC's disclosure frameworks to better inform and protect investors and improve the fairness and efficiency of U.S. capital markets.

Environmental Defense Fund ("EDF") is a nonprofit public interest organization working to strengthen people's ability to thrive in a changing climate with an approach grounded in economics, law, and science – including addressing

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[2] *Amici* Sierra Club, Sierra Club Foundation, and Natural Resources Defense Council filed petitions for review which were transferred to the 8th Circuit as cases No. 24-1633 and No. 24-1623, respectively, and consolidated with the above-captioned cases. As petitioners, *amici*, sought review of SEC decisions to drop certain proposed requirements. However, these *amici* support the remaining provisions of the Rules. Both petitions were voluntarily dismissed.

climate-related financial risks. EDF has long sought to improve disclosure and understanding of climate-related risks through efforts including technical analyses, private sector partnerships, satellite detection of greenhouse gas emissions, and regulatory advocacy.

Natural Resources Defense Council ("NRDC") is a nonprofit organization focused on protecting public health and the environment. NRDC has a strong interest in promoting resilience to climate change and advocating for policies to address climate-related financial risks. NRDC has sought greater investor protection through securities disclosures, *see NRDC v. SEC*, 606 F.2d 1031 (D.C. Cir. 1979), and the consistent and comparable financial disclosures required by the Rules will benefit investors who seek to manage climate-related risks, including members of NRDC.

The Sierra Club is a national nonprofit organization whose mission is to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Among Sierra Club's highest priorities is advocating for federal regulatory policies that address the impacts of climate change, including impacts to the financial system. Sierra Club also has an investment portfolio of approximately $62 million and represents millions of members and supporters, many of whom have

significant investments of their own. The Sierra Club and its members seek more reliable and comparable climate-related disclosures.

The Sierra Club Foundation ("The Foundation") is a 501(c)(3) public charity whose mission is to promote efforts to educate and empower people to protect and improve the natural and human environment by providing charitable grants to organizations and making mission-aligned investments. The Foundation has approximately $200 million in assets it invests to achieve long-term performance in mission-aligned investments while moderating financial risk. The Foundation will directly benefit from improved climate-related disclosures, reducing the time and money their fund managers must expend to address gaps in disclosures.

SUMMARY OF ARGUMENT

Climate-related risk is financial risk. Climate impacts create operational and market risks, which can affect companies' business strategy, results of operations, or financial condition. Investors know this. For years they have expended resources to make up for inadequate disclosures that hinder their ability to make well-informed investment and voting decisions and lessen the fairness and efficiency of the capital markets. After years of evaluating the role of climate-related information in investment decisions, the Securities and Exchange Commission ("Commission" or "SEC") rightly recognized the need to standardize these disclosures. The Commission's disclosure regulations have always played a critical

role in protecting investors from risks companies may not fully disclose absent a specific duty to do so. The circumstances leading to these Rules provide a classic example of when such regulatory action is necessary.

Petitioners seek to carve out climate-related information from securities regulation, leaving investors with inadequate protection from these significant and growing risks. This would require investors to continue inefficiently expending resources for less reliable, less comparable information. The physical impacts of climate change will continue to affect companies, resulting in additional costs, disruptions, and lost value for investors with or without the Rules. Changes to the nation's energy supply, policies, and technologies, to consumer needs, and to production and transportation methods will also continue regardless. Placing blinders on investors does not avoid the financial impacts from climate-related risks that companies face right now. It simply makes it harder for the market to adapt to these evolving risks and harms investors.

In promulgating these Rules, the SEC proceeded rationally: it evaluated the importance of climate-related information to the decisions of reasonable investors based on a substantial record, and adopted Rules supported by that record. The Rules directly respond to a growing chorus of investor demands for more consistent, comparable, and reliable information on climate-related risks and align with the Commission's longstanding view that environmental matters can be

material. The SEC has considered the relevance of environmental and climate-related matters to investment decisions for decades and adjusted disclosure requirements accordingly.

Petitioners' attempts to paint the SEC's rulemaking as arbitrary and capricious mischaracterize the Rules, the Commission's past positioning, and the administrative record. In fact, the Rules are necessary to protect investors and promote market efficiency and capital formation—the SEC's central mission. Commenters provided ample evidence of the importance of standardized, accurate physical and transition risk information to investor decision-making. The Rules are supported by the record and should be upheld.

ARGUMENT

I. The Rules are consistent with the Commission's longstanding view that environmental information can be material to investment and voting decisions.

Rules designed to facilitate the disclosure of information necessary for sound investment decisions are critical to protecting investors, the key purpose of the Securities Act and Securities Exchange Act (collectively, "the Acts"). *See* SEC Br. 29-30 (explaining how courts have interpreted the Acts as designed to protect investors by promoting full disclosure). The SEC first promulgated disclosure requirements shortly after the Acts' enactment in the 1930s, and ever since, has periodically modified them when additional information important to investment

and voting decisions was needed. SEC Br. 33. These Rules are no different.

A. The Commission has required issuers to disclose financially relevant environmental information since at least the early 1970s.

The Rules are consistent with the Commission's longstanding view that securities laws require disclosure of financially relevant information about environmental matters. Petitioners' claims that the SEC reversed a long-standing position by requiring issuers to disclose climate-related risks, *see* States Br. 31-32, 40, Liberty Energy Br. 40, are simply false.

Under federal securities laws, the SEC can require issuers to disclose information "as the Commission may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors." 15 U.S.C. § 77g(a)(1); *see id.* § 78m(a).[3] In carrying out that statutory delegation of authority, the Commission has required issuers to disclose specific environmental information since the early 1970s. In 1971, the Commission first provided guidance about the circumstances in which its existing regulations called "for disclosure of legal proceedings and descriptions of registrant's business" related to

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[3] As the SEC notes in its brief, this statutory language mirrors the Supreme Court's examples of terms that "'expressly delegate[]' to the [agency] 'discretionary authority' both to 'fill up the details of a statutory scheme' and to 'regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility.'" SEC Br. at 28 (quoting *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2263 (2024)).

"material matters involving the environment and civil rights." *Disclosures Pertaining to Matters Involving the Environment and Civil Rights*, 36 Fed. Reg. 13,989, 13,989 (July 29, 1971). Two years later, the Commission adopted regulations requiring disclosure of the material effects of compliance with environmental laws on capital expenditures, earnings, and competitive position, as well as any environmental proceeding under a governmental authority. *See Disclosure with Respect to Compliance with Environmental Requirements and Other Matters*, 38 Fed. Reg. 12,100 (May 9, 1973); *see also Conclusions and Final Action on Rulemaking Proposals Relating to Environmental Disclosure*, 41 Fed. Reg. 21,632 (May 27, 1976) (requiring "disclosure of capital expenditures for environmental compliance purposes").

The SEC has modified or proposed to modify these requirements from time to time, as it did in the 1980s when it proposed to limit disclosures about environmental litigation to proceedings involving fines over a certain threshold. *See Proposed Amendments to Item 5 of Regulation S-K Regarding Disclosure of Certain Environmental Proceedings*, 46 Fed. Reg. 25,638, 25,639 n.17 (May 8, 1981). It has never, however, reversed its position that it has statutory authority to require such disclosures. *See* SEC Br. 34-36 (describing how the Commission's history of requiring "disclosure of environmental matters has consistently centered on the information's importance to investment and voting decisions").

Petitioners misunderstand this history. State Petitioners, for example, argue that the Commission concluded in 1975 that it "lacked authority to require blanket climate-related disclosures." States Br. 40. That is not accurate. Rather, in response to a petition seeking disclosures about issuers' environmental practices—a petition that *amicus* NRDC joined—the Commission adopted some of the proposed disclosures about environmental matters, *see* 41 Fed. Reg. at 21,632, but rejected others. The SEC declined to require those latter disclosures because it found they were not justified by the then-current state of the capital markets, not because it concluded it did not have legal authority to adopt them. *See Environmental and Social Disclosure, Notice of Commission Conclusions and Rulemaking* Proposals, 40 Fed. Reg. 51,656, 51,662, 51,663-665 (Nov. 6, 1975). The SEC noted that at the time there was no "uniform method by which the environmental effects of corporate practices may be described," and so "both the costs to registrants and the administrative burdens involved . . . would be excessive." *Id.* at 51,662. Rather than drawing a hard line between *general* securities disclosures and those that implicate environmental concerns, the Commission's approach was to assess changes in the market in determining disclosure requirements. *See id.* at 51,663-665; *see also* SEC Br. 35. Hence, the SEC made clear that in carrying out its investor protection mandate, it could "expand or contract disclosure rules in light

of changes in the relevant context in which securities issuers conduct their business." 40 Fed. Reg. at 51,659.

B. In 2010, the Commission released guidance on considering materiality of climate-related information, following significant investor and state concerns about misleading disclosures.

More than a decade before issuing the Rules, the Commission explicitly recognized the materiality of climate-related information. By 2010, the SEC had received petitions for climate-related disclosure rulemaking from "large institutional investors and other investor groups;" it had received information from stakeholders—including investors, state officials, and *amicus* EDF—"regarding climate risk disclosure in SEC filings;" and the New York Attorney General's Office had settled investigations of three energy companies "regarding their disclosures about their greenhouse gas emissions and potential liabilities to the companies resulting from climate change and related regulation." *Commission Guidance Regarding Disclosure Related to Climate Change*, 75 Fed. Reg. 6,290, 6,291-92 & n.20 (Feb. 8, 2010). The petitions before the Commission also included one from the Free Enterprise Action Fund that "urge[d] the Commission to issue guidance warning companies not to include information on climate change that may be false and misleading." *Id.* at 6,291 & n.20.

In response, the Commission issued guidance outlining its "views with respect to our existing disclosure requirements as they apply to climate change

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matters . . . to assist companies in satisfying their disclosure obligations." *Id.* at 6,290. The SEC itself had identified a growing number of companies making substantive disclosures about climate-related risks. *See id.* at 6,292 & n.22 ("[W]e have been informed by the Edison Electric Institute that 95% of the member companies it recently surveyed reported that they included at least some disclosure related to greenhouse gas emissions in their SEC filings"). And the Commission noted that some investors were obtaining information about climate-related topics through voluntary reporting initiatives. *Id.* at 6,292.

The Commission's guidance explained that issuers may need to disclose some climate-related information pursuant to existing requirements of Regulation S-K, discussing "the most pertinent" rules and "their application to disclosure of certain specific climate change related matters." *Id.* at 6,293. These included an issuer's description of its business, discussions of legal proceedings and risk factors, and the management discussion and analysis, among other items. *Id.* at 6,293-97. The Commission further described how disclosures could cover the impacts of legislation and regulation, international accords, and the physical impacts of climate change. *Id.*

C. The Commission once again evaluated the adequacy of issuers' disclosures of environmental and climate-related risks in its 2016 Concept Release.

Continuing its practice of considering the adequacy of disclosures in light of

changing market circumstances, the SEC sought comment in 2016 on adjusting Regulation S-K to reflect emerging topics relevant to issuers' business and financial condition and investment and voting decisions. *Business and Financial Disclosure Required by Regulation S–K*, 81 Fed. Reg. 23,916 (Apr. 22, 2016). Recognizing that the issues material to the reasonable investor evolve over time, the Commission reiterated that disclosure requirements must do so as well, noting that "the task of identifying what information is material to an investment and voting decision is a continuing one in the field of securities regulation." 81 Fed. Reg. at 23,971. The 2016 Concept Release acknowledged that investors were incorporating new factors, including climate-related factors, into financial analyses. *See* 81 Fed. Reg. at 23,972. The SEC sought comment on the sufficiency of climate-related disclosures, responding to evidence of remaining inadequacy years after the 2010 guidance. *Id.* at 23,971. Responsive comments informed the Commission of the growing gap between the information investors needed and that which issuers disclosed.

Several Petitioners rely on an out-of-context quote to argue that the SEC held a static position from the 1970s to 2016 that it could not require environmental disclosures. *See* States Br. 31, Nat'l Legal and Pol'y Center and Oil and Gas Workers Ass'n Br. 43, and Liberty Energy Br. 20. However, read in its entirety, the cited section of the Concept Release makes precisely the opposite

point. The Commission notes that it determined "*in the past* that disclosure relating to environmental and other matters of social concern should not be required of all registrants," citing the 1975 determination described above. 81 Fed. Reg. at 23,970 (emphasis added). But as previously discussed, the Commission did *not* conclude in 1975 that it lacked authority to require information on environmental matters. Instead, it rejected some requirements because it did not find them important to the reasonable investor in 1975. In 2016, the SEC cited this decision when requesting comment on how the needs of the reasonable investor have changed since that time, specifically requesting information about the adequacy of climate-related information in disclosures. *Id.* at 23,973.

The 2016 release reflects the Commission's practice of regularly evaluating emerging risks and their relevance to investment and voting decisions to assess disclosure gaps that threaten investors, market efficiency, and capital formation. The SEC does not tell investors what *should* be important to them, but, as the record and the regulatory history reflect, it responds to changes in how investors use information over time and adjusts disclosure requirements "in light of … market developments." SEC Br. 35.

D. The Rules are a response to changing market conditions, developed independent of an executive order.

The Commission's decision to implement new climate-related disclosure requirements in 2024 reflected its evaluation of current market conditions—

recognizing the rising investor demand for and use of such information, the growing financial importance of climate-related information, and the inadequacy of current disclosures in illuminating risks. Petitioners mischaracterize a May 2021 executive order, which does not include any reference to the SEC specifically, as the precipitating event for the Rules. *See* Chamber Br. 7, Liberty Energy Br. 18. But the SEC had been evaluating climate-related risks, and how well corporate disclosures addressed them, since at least the early 2000s, as discussed above. Before proposing the Rules, the SEC took numerous additional actions to assess the adequacy of climate-related disclosures. Commissioner Lee directed the SEC's Division of Corporation Finance to enhance review of compliance with the 2010 guidance and to learn how the market managed climate-related risks; the SEC's Division of Examinations prioritized climate-related risks in examinations of proxy voting policies and practices; the SEC's Division of Enforcement created a task force to identify gaps or misstatements in climate risk disclosures; and the Commission issued a request for public comment on climate-related disclosures, all announced *months before* that executive order.[4]

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[4] *See* Allison Herren Lee, *Statement on the Review of Climate-Related Disclosure*, SEC (Feb. 24, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-statement-review-climate-related-disclosure; *SEC Division of Examinations Announces 2021 Examination Priorities*, SEC (Mar. 3, 2021), https://www.sec.gov/newsroom/press-releases/2021-39; *SEC Announces*

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The SEC thus did not undertake the Rules suddenly in response to an executive order but acted carefully following years of evaluating climate-related risks and the adequacy of disclosures informed by investor demand.

II. The Rules are well supported by the record and promote investor protection, market efficiency, competition, and capital formation.

The Rules are supported by substantial evidence of the materiality of climate-related information to investors and the inadequacies of information provided by issuers under existing disclosure rules. *See Biestek v. Berryhill*, 587 U.S. 97, 103 (2019) (defining substantial evidence in the context of administrative rulemaking as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). In developing the Rules, the SEC relied on academic literature linking climate-related risks to firm fundamentals and investor comments and surveys supporting more reliable, consistent, and comparable information on climate-related risks. SEC Br. 20 (describing and citing to record evidence).

Enforcement Task Force Focused on Climate and ESG Issues, SEC (Mar. 4, 2021), https://www.sec.gov/newsroom/press-releases/2021-42; Allison Herren Lee, *Public Input Welcomed on Climate Change Disclosures*, SEC (Mar. 15, 2021), https://www.sec.gov/newsroom/speeches-statements/lee-climate-change-disclosures.

A. The Rules are supported by substantial evidence of the materiality of physical climate impacts on companies.

The SEC properly determined based on substantial evidence in the record that climate impacts are causing significant disruptions to the U.S. economy and investors need better information to navigate these risks. *See, e.g.*, 89 Fed. Reg. at 21,679, n.136 (noting U.S. Fifth National Climate Assessment findings "that extreme weather events cause direct economic losses through infrastructure damage, disruptions in labor and public services, and losses in property values, and that the United States currently experiences an extreme weather event causing a billion dollars or more in costs and losses every three weeks compared to one such event every four months in the 1980s"); *id.* at 21,679, n.137 (citing investors including BlackRock, Boston Common Asset Mgmt, Breckinridge Capital Advisors, Calvert, East Bay Municipal Utility District Employee Retirement System, Harvard Mgmt, Impax Asset Mgmt, Parnassus Investments, Rockefeller Asset Management, Pacific Investment Management Company ("PIMCO"), SKY Harbor, Washington State Investment Board, and Vanguard). For instance, PIMCO commented: "[W]e believe climate risks often pose a material financial risk, and therefore, investors need disclosure of climate risks that is complete, reliable, and consistent in order to analyze how climate-related risks may affect a company's business or overall financial performance." PIMCO Comment Letter (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132331-302894.pdf

(cited in 89 Fed. Reg. at 21,672, n.28). Wellington Management agreed that "issuers face new risks relating to climate change—specifically, transition risk and physical risk—and that these risks necessitate enhanced issuer disclosure." Wellington Management Co. Comment Letter at 3 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131856-302305.pdf (cited in 89 Fed. Reg. at 21,672, n.28).

While physical climate impacts pose financial threats to companies across the United States, the particular hazards and vulnerabilities vary across sectors and locations and from one issuer to another, necessitating issuer-specific information. *See, e.g.*, 89 Fed. Reg. at 21,689, n.262 (citing BMO Global Asset Mgmt.; CalSTRS; IATP; and Morningstar); *and* 89 Fed. Reg. at 21,677, n.103 (citing BlackRock; Bloomberg; Calvert; Franklin Templeton; Miller/Howard). For example, CalSTRS noted that location-specific risk information would be useful for an investment in "a refinery or chemical plant on the Gulf Coast, where hurricane risk is high every autumn," and that it would "help investors to know how companies mitigate those physical climate risks, such as through property insurance and business interruption coverage." CalSTRS Comment Letter at 7 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132337-302902.pdf (cited in 89 Fed. Reg. at 21,689, n.262).

From the issuer side, the chemical company Dow affirmed the significance

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of physical risks, discussing property damage and repair costs related to "a number of extreme weather events on the U.S. Gulf Coast." Dow Comment Letter at 6 (May 19, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20129102-294777.pdf (cited in 89 Fed. Reg. at 21,792, n.1998). As Calvert emphasized in its comment, "[i]ssuers are better positioned than investors to understand their own climate-related exposures, so we need reliable, consistent, and comparable climate disclosures from issuers to reduce this informational asymmetry." Calvert Letter at 2 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20132239-302761.pdf (cited in 89 Fed. Reg. in 21,677, n.103).

Investors also described how they already use climate-related information to price and manage climate risks, *see* 89 Fed. Reg. at 21,677, n.101 (citing CalSTRS; Calvert; and Wellington Mgmt.), and how current information falls short of their needs, *see, e.g.*, 89 Fed. Reg. at 21,670, n.11 (citing letters from investors). The SEC therefore has a vital role in improving the reliability and usefulness of climate risk data for investor decision-making. *See, e.g.*, 89 Fed. Reg. at 21,680, nn.138 & 139 (citing letters from numerous institutional and retail investors). The Rules respond to this need.

Recent events illustrate the financial threats that severe weather and other natural conditions pose to companies across the United States. Increases in the frequency and/or severity of events like hurricanes, storms, floods, and wildfires

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have driven up the number of "billion dollar" disasters.[5] In turn, property insurance premiums have increased dramatically and major insurance companies are discontinuing core forms of coverage or exiting markets entirely.[6] Physical climate risks damage companies' assets, disrupt their operations, and result in the failure of critical infrastructure on which they depend.

In June 2024, parts of South Dakota, Minnesota, and Iowa received more than a foot of rain over a two-day period,[7] causing record-breaking floods and destroying infrastructure and physical assets.[8] The agricultural sector suffered

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[5] *See* NOAA, Nat'l Center for Env't Information, Billion-Dollar Weather Climate Disasters (2024), https://www.ncei.noaa.gov/access/billions/ ("In 2024 [as of August 8], there have been 19 confirmed weather/climate disaster events with losses exceeding $1 billion each to affect United States.").

[6] Natalie Ambrosio Preudhomme, New Data and Regulation Show an Insurance Industry in Flux, Moody's CRE (May 23, 2024) (noting that from 2014-2023, the homeowners insurance industry paid out more in claims than it earned in premiums); Christopher Flavelle, *As Climate Shocks Grow, Lawmakers Investigate Insurers Fleeing Risky Areas*, N.Y. Times (last visited Aug. 14, 2024), https://www.nytimes.com/2023/11/01/climate/climate-insurance-disasters-senate.html ("Faced with growing losses from hurricanes, floods and wildfires, major insurance companies are pulling out of California, Florida and Louisiana — a shift that threatens to undermine the economies of those states."); *see also* U.S. Global Change Research Program, Fifth National Climate Assessment at p. 19-13 (2023), https://nca2023.globalchange.gov/ ("As the risk of climate extremes grows, private insurers are expected to abandon high-hazard areas, as is occurring in some wildfire- and hurricane-prone locations.").

[7] *Record Rainfall Floods Midwest*, NASA Earth Observatory (June 25, 2024), https://earthobservatory.nasa.gov/images/152982/record-rainfall-floods-midwest.

[8] Steven Yablonski & Scott Sistek, *Life-Threatening Flash Flooding, Record River Flooding in Upper Midwest*, Fox Weather (June 21, 2024),

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particularly heavy economic losses, with an estimated half million to 1 million U.S. corn acres lost to flooding.[9] One analysis estimates a $12.5 billion economic loss from impacts of this flooding.[10] Such extreme rainfall events have become more frequent and intense since the 1950s.[11]

Last month, Hurricane Beryl struck Texas and fueled storm activity through much of the eastern United States, including at least 65 tornados across six states,[12] inflicting severe infrastructure damage.[13] Over 2.9 million Texas homes and businesses lost power,[14] with 860,000 CenterPoint Energy customers still lacking

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https://www.foxweather.com/weather-news/life-threatening-flash-flooding-record-river-flooding-upper-midwest-iowa-minnesota.

[9] Tyne Morgan, *Flooding Across Midwest May Have Wiped Out Up to 1 Million Acres of Crops*, AgWeb (July 3, 2024), https://www.agweb.com/news/crops/crop-production/flooding-across-midwest-may-have-wiped-out-1-million-acres-crops-new.

[10] Chaffin Mitchell, *U.S. disaster aid won't cover lost crops in Midwest floods, farmers out millions of dollars*, AccuWeather (July 1, 2019), https://www.accuweather.com/en/weather-news/us-disaster-aid-wont-cover-lost-crops-in-midwest-floods-farmers-out-millions-of-dollars/332960.

[11] U.S. Global Change Research Program, *Fifth National Climate Assessment* 2-18 to 2-19 (2023), https://nca2023.globalchange.gov/.

[12] Jonathan Erdman, *Hurricane Beryl Spawned Most US Tornadoes of Any Tropical System in 19 Years*, The Weather Channel (July 22, 2024), https://weather.com/storms/tornado/news/2024-07-13-hurricane-beryl-most-us-tornadoes-since-2005.

[13] *Hurricane Beryl*, Texas Division of Emergency Management (2024), https://tdem.texas.gov/disasters/beryl.

[14] Brian Lada, *Beryl's fury turns deadly, leaves millions in the dark across Texas*, AccuWeather (July 10, 2024), https://www.accuweather.com/en/hurricane/beryls-fury-turns-deadly-leaves-millions-in-the-dark-across-texas/1667762.

electricity five days later.[15] Issuers' operations disrupted by power loss included chemical companies Dow and Olin,[16] Union Pacific Railroad,[17] and multiple oil companies.[18] The largest ports in Texas, including major oil and refined products shipping hubs, closed operations and vessel traffic.[19] Estimated total U.S. economic loss is $28-32 billion. *Id.* Hurricanes now tend to intensify more quickly, allowing for less preparation time, and move more slowly, extending the duration and severity of impacts.[20]

Severe weather events like these cause significant financial harm to companies through direct damage to assets, disruption of operations, destruction of critical infrastructure, liability to customers, or increasing insurance premiums.

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[15] Arathy Somasekhar, *Nearly a Million in Texas Still Without Power After Hurricane Beryl*, Reuters (July 12, 2024), https://www.reuters.com/world/us/nearly-million-texas-still-without-power-after-hurricane-beryl-2024-07-12/.
[16] *Id*.
[17] Kelly Stroh et al., *How Hurricane Beryl is Impacting Logistics Operations in Houston*, Supply Chain Dive (July 10, 2024), https://www.supplychaindive.com/news/hurricane-beryl-logistics-operations-houston-air-cargo-trucking-rail-maritime/721017/.
[18] Marianna Parraga et al., *Oil companies try to restore Texas operations after Storm Beryl*, Reuters (July 9, 2024), https://www.reuters.com/business/energy/oil-companies-texas-restoring-operations-following-hurricane-beryl-2024-07-09/.
[19] Brian Lada, *Beryl's fury turns deadly, leaves millions in the dark across Texas*, AccuWeather (July 10, 2024), https://www.accuweather.com/en/hurricane/beryls-fury-turns-deadly-leaves-millions-in-the-dark-across-texas/1667762.
[20] U.S. Global Change Research Program, *supra* note 11 at 2-16 to 2-20.

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With the costliness of these events already high and growing,[21] investors need more information about physical climate risks and companies' approaches to managing such risks.

B. The Rules are supported by substantial evidence of investors relying on climate-related information to assess transition risks.

The Rules require disclosures that will improve investors' ability to accurately assess financial implications of transition risks. The SEC explains that "market-based transitions to lower carbon products, practices, and services can lead to material changes in a company's business model or strategy; and changes in law, regulation, or policy may prompt companies to transition to lower carbon products, practices, and services." SEC Br. 13 (citing the Rules) (internal citations omitted). The risks (or opportunities) that companies experience from such shifts are precisely the type of business information that investors need.

Investors explained in comments how transition risk influences their decisions and the importance of transition risk disclosures. Wellington Management noted that not addressing transition risk "could result in the company missing strategic opportunities for growth or the ability to address vulnerabilities in its business model, which, over time, could threaten its profitability or even its ability to continue to operate its business." Wellington Mngmt Comment Letter at

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[21] NOAA, *supra* note 5.

3 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131856-302305.pdf (cited at 89 Fed. Reg. at 21,677). AllianceBernstein L.P. supported Scopes 1 and 2 greenhouse gas emissions disclosures as "critical to investors' understanding of the quality of a company's earnings in the face of climate change and the energy transition." AllianceBernstein Comment Letter at 4-5 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131813-302250.pdf (cited at 89 Fed. Reg. at 21,677). The SEC found that commenters view greenhouse gas disclosures as "fundamental" because they "help[] investors understand the financial impacts that transition risk may have on a registrant's business and financial condition, including on its liquidity and capital resources." 89 Fed. Reg. at 21,730 (citing letters from Calvert; Fidelity; C. Howard; Impax Asset Mgmt.; and Morningstar); *see also id.* at 21,860 n.2850 (citing letters from Vanguard, Fidelity, BlackRock, CALSTRS, and CalPERS as examples of investors already "deriv[ing] utility from existing emissions disclosures").

Climate-related transition risks are already prompting companies to shift products and strategies. While these shifts bring opportunities and growth for some industries and companies, like the automakers, agricultural producers, and other U.S. businesses that can benefit from Inflation Reduction Act programs, others face challenges in navigating a transition to a lower carbon economy. Some examples include the oil and gas industry, power sector, agriculture, aviation, and

steel, chemical, and cement manufacturers.[22] Oil majors have announced multi-billion-dollar write-downs in recent years due to lowered long-term price assumptions, reducing valuation and highlighting the potential for stranded assets.[23] Transition-related costs will be "passed through supply chains and to customers and as they reduce firms' ability to service debt or produce returns for investors," affecting longer-term performance. 89 Fed. Reg. at 21,672, n.28 (citing 2021 FSOC Report, Chapter 1). The Rules' disclosure requirements will help investors assess transition risks within sectors and differentiate among competing investment options.

C. Substantial record evidence demonstrates that the Rules will reduce investors' information costs and enable risk management.

Current disclosures fall short of what investors need; the "lack of consistency and comparability increases costs to investors…and impairs investors' ability to make investment or voting decisions in line with their risk preferences." 89 Fed. Reg. 21,670 (citing numerous commenters). CalPERS commented that the 2010 guidance "has thus far been broadly ignored" and thus that "[m]andatory

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[22] Mekala Krishnan et al., *The economic transformation: What would change in the net-zero transition* (Jan. 25, 2022), https://www.mckinsey.com/capabilities/sustainability/our-insights/the-economic-transformation-what-would-change-in-the-net-zero-transition.
[23] *Shell's US $22bn write down 'signals fundamental change,'* Wood Mackenzie (June 30, 2020), https://www.woodmac.com/press-releases/shell_writes_down_us$22bn_in_assets/.

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rules are necessary." CalPERS Comment Letter at 7 (June 15, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20131391-301546.pdf. In the absence of adequate disclosure regulation, investors seek similar (but less comparable and reliable) information in other ways, expending resources to do so. *See* 89 Fed. Reg. at 21,670, n.11 and at 21,680, nn.138-139. For example, Trillium Asset Management relies on emissions estimates from external data providers, paid third-party assessments of a company's management of climate-related risks, and seeks information directly from companies, requiring significant staff time and resources. Trillium Asset Management Comment Letter at 2-4 (June 17, 2022), https://www.sec.gov/comments/s7-10-22/s71022-20147082-312665.pdf. AllianceBernstein cited "severe inconsistencies and weaknesses" in current climate-related disclosures, causing investors to "expend significant resources to identify, collect, estimate and manage climate disclosures and data," such as purchasing third-party data, consulting with experts, reconciling gaps in disclosures, and developing data from other sources. *See* AllianceBernstein Comment Letter at 2.

Long-term and diversified investors are particularly concerned with how these risks affect market growth and stability. In 2023, the Financial Stability Oversight Council noted that climate-related risks threaten financial stability and amplify other financial risks. 89 Fed. Reg. at 21,672, n.28 (citing FSOC Annual

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Report 2023). Due to this concern, diversified investors are adjusting their investment practices to navigate these market-wide system risks,[24] with a focus on preserving long-term value.[25] Twenty state attorneys general emphasized the importance of institutional investors' access "to meaningful climate-related information," because of its relevance "not only to the return of a given company but to the overall risk management strategy of investors and the market as a whole," resulting in improvements in price discovery and allocative efficiency. California, et al. Attorneys General Comment Letter at 17 (June 17, 2022) (cited at 89 Fed. Reg. at 21,670).

By reducing information asymmetry and mispricing of climate-related financial risks, the Rules will improve market efficiency and support long-term market growth. 89 Fed. Reg. at 21,888.

D. Petitioners' arguments that the Rules are arbitrary and capricious are unavailing.

The Rules have extensive support from the rulemaking record, including investor comments (discussed *supra*), issuer comments, and economic studies.

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[24] *See System-Level Investing: Case Studies of Investors Leading the Way*, The Investment Integration Project (Apr. 10, 2024), https://tiiproject.com/the-investment-integration-project-releases-new-report-system-level-investing-case-studies-of-investors-leading-the-way-that-highlights-first-mover-investment-teams-that-have-embrac/.

[25] *See System Stewardship Theory*, The Shareholder Commons (2024), https://theshareholdercommons.com/resources-page/.

Petitioners downplay the parts of the record inconvenient to their arguments but miss the mark. While Petitioners may believe that climate risks *shouldn't* inform investors' decisions, the record undoubtedly supports the SEC's conclusion that they *do*, and "arbitrary and capricious review does not ask who is right. It asks whether the [agency] followed a defensible process in assessing who is right." *Nat'l Parks Conservation Ass'n v. McCarthy*, 816 F.3d 989, 996 (8th Cir. 2016) (quoting *St. Marys Cement, Inc. v. EPA*, 782 F.3d 280, 286 (6th Cir. 2015)).

First, Petitioners claim that the Commission relied on the comments of activist investors to justify the Rules. Chamber Br. 27. On the contrary, the Commission did not rely on any particular subset of comments; numerous and varied investors filed comments in support of the proposed Rules, and the Commission cited this support throughout the rulemaking process. As the SEC explained in the proposed Rules, "surveys of institutional investors indicate that climate risk is one of the most prominent issues driving their investment decisions and engagements with companies." *The Enhancement and Standardization of Climate-Related Disclosures for Investors*, 87 Fed. Reg. 21,334, 21,429 (Apr. 11, 2022); *see also id.* at 21,244-45 (discussing survey data). Public comments on the proposed Rules demonstrated the importance of climate-related information to large institutional and retail investors alike. *See* 89 Fed. Reg. at 21,671-21,673 & nn.42-44 (citing, *inter alia*, AllianceBernstein; BlackRock, Inc.; CalPERS;

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CalSTRS; Calvert Research and Management; Decatur Capital Management; and Harvard Management Company) *and id.* at 21,672 & n.40 (finding "most individual retail investors and firms advising such investors who submitted comments supported the proposed rules.").[26]

Second, Petitioners argue that the Commission failed to demonstrate that climate information is material to investors. Chamber Br. 22-23; Liberty Energy Br. 42-43. The record shows otherwise: in both the proposed and final Rules, the SEC cited investor comments and empirical literature discussing how climate-related risks affect company valuations. *See* 87 Fed. Reg. at 21,429 & nn.848-52 (proposed Rules citing comments and studies); 89 Fed. Reg. at 21,841 & nn.2655-2660 (final Rules citing additional studies confirming conclusion). Petitioners largely ignore this evidence.

The Chamber attempts to dismiss the value of this literature by arguing that the Commission cannot rely on studies it did not post for public comment. Chamber Br. 24. But in a final rule, an agency "may include new 'supplementary' information that 'expands on and confirms' data in the rulemaking record."

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[26] The disclosure of more consistent, comparable, and reliable information benefits all investors—even those who do not access the information themselves—because it fosters greater market efficiency and stock price accuracy. *See* George S. Georgiev, *The Market-Essential Role of Corporate Climate Disclosure*, 56 U.C. Davis L. Rev. 2105, 2116-17 (2023).

Competitive Enter. Inst. v. U. S. Dep't of Transp., 863 F.3d 911, 920 (D.C. Cir. 2017) (quoting *Solite Corp. v. EPA*, 952 F.2d 473, 484 (D.C. Cir. 1991) (per curiam)); *see also Bldg. Indus. Ass'n of Superior CA v. Norton*, 247 F.3d 1241, 1246 (D.C. Cir. 2001) (agency permitted to cite study in the final rule that "provided additional support for [the agency's] hypothesis"). In the opinion that the Chamber relies on, *Chamber of Commerce v. SEC*, 443 F.3d 890, 900-03 (D.C. Cir. 2006), the D.C. Circuit distinguished extra-record information from "supplementary" studies that "clarify, expand, or amend other data that has been offered for comment." *Id.* at 903.

Finally, Petitioners argue that the studies the Commission cited are flawed because they are not event studies. Chamber Br. 24-26. Although event studies are used in securities fraud litigation to demonstrate elements such as loss causation, *see* Jill E. Fisch et. al., *The Logic and Limits of Event Studies in Securities Fraud Litigation*, 96 Tex. L. Rev. 553, 556 (2018), they are not a requirement for the Commission to exercise its regulatory discretion under the Acts. *Cf. FCC v. Prometheus Radio Project*, 592 U.S. 414, 427 (2021) (noting that "nothing in the Telecommunications Act (or any other statute) requires the FCC to conduct its own empirical or statistical studies before exercising its discretion under Section 202(h)."). The SEC explained in the final Rules that it did not conduct its own event study because "[e]xisting research finds an increase in stock price volatility

around the day when GHG or carbon emissions are disclosed in a Form 8-K filing. This suggests that investors find such disclosures to be informative." 89 Fed. Reg. at 21,841. The record reflects that the Commission considered the relevant factors and has fully justified its decision in light of the record evidence. *See Bowman Transp., Inc. v. AR-Best Freight System, Inc.*, 419 U.S. 281, 285 (1974); *see also Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

CONCLUSION

The SEC's rules are the latest step in a decades-long history of evaluating the significance of climate-related financial risks and adjusting disclosure practices to keep up with the needs of investors. After years of changing market conditions, the Commission received extensive information from investors and experts demonstrating the importance of material climate-related risks and explaining how existing disclosure requirements fail to meet investors' informational needs. The Rules are consistent with the SEC's long-standing practices in exercising its traditional authority, are well-supported by the record, and fill a critical gap in disclosure practices that put investors and the market at risk if unaddressed. For the reasons above, the Court should uphold the Rules.

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CERTIFICATE OF COMPLIANCE

1) The undersigned counsel for *amici curiae* certifies pursuant to Federal Rule of Appellate Procedure 32(a)(7) that the foregoing brief contains 6438 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(f).

2) This brief complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point font of Times New Roman.

3) To comply with 8th Cir. R. 28A(h)(2), the brief was scanned for viruses. The brief is virus free.

Dated: August 15, 2024

/s/ *Hana Vizcarra*
Hana Vizcarra

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system on August 15, 2024.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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